**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL APPEAL No. 517 of 1992**

**For Approval and Signature:**

**HONOURABLE MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**STATE OF GUJARAT - Appellant(s)**
**Versus**
**THA. HARIDAS VASHRAM & SONS & 5 - Opponent(s)**

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**Appearance :**
MR PRADIP BHATE, APP for Appellant(s) : 1,
MR PM THAKKAR for Opponent(s) : 1 – 5.
Opponent : 6 SERVED.

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**CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT**

**Date : 20/07/2006**

**ORAL JUDGMENT**

Heard the learned advocates.

This is an Appeal preferred by the prosecution under Section 378 Cr.P.C. against the order of

acquittal dated 26th February, 1992 recorded by the learned Judicial Magistrate, First Class, Porbandar in Criminal Case No.5640/1986.

The respondents Nos.1 to 5 are a partnership firm and the partners therein engaged in whole-sale trading in grocery and food articles. On 15th July, 1986 the Food Inspector visited the place of business of the said respondents and collected sample of 'Rose' brand chillie powder sold by the said respondents. The said sample was sent for analysis to the Public Analyst. On receipt of the report of the Public Analyst it was found that the chillie powder sold by the said respondents was adulterated. The Food Inspector, therefore, after receiving sanction of the Assistant Director and Local Health Authority as envisaged by Section 20 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as, **"the Act"**), lodged prosecution against the said respondents and the respondent No.6, from whom the respondents Nos.1 to 5 had purchased the quantity of chillie powder in question, in the Court of Judicial Magistrate, First Class, Porbandar. On 29th May, 1989,

the learned Judicial Magistrate framed charge against the respondents for offence punishable under Sections 7 and 16 of the Act. The learned Judicial Magistrate, by his judgment and order dated 26th February, 1992, held that the sanction given by the Local Health Authority under Section 20 of the Act was not legal and valid in as much as it was not given after application of mind. The learned Judicial Magistrate accordingly recorded acquittal against the respondents – accused. Therefore, the present Appeal.

Mr.Bhate has submitted that the learned Magistrate has erred in holding that the sanction given by the Local Health Authority under Section 20 of the Act was not legal and valid. He has submitted that the sanction given by the Local Health Authority was in consonance with Section 20 of the Act. The same was given after perusal of the relevant materials. In support of his submissions, Mr.Bhate has relied upon the judgment of the Hon'ble Supreme Court in the matter of **Suresh H.Rajput etc. v/s. Bhartiben Pravinbhai Soni and others etc.** [AIR 1996 S.C. 2883]. The said judgment has been followed by

this Court in the matter of **State of Gujarat v/s. Yogeshbhai Dalpatram Vira** [Criminal Appeal No.679 of 1992 decided on 14th September, 2001; Coram: J.M.Panchal, J.].

The Appeal is contested by Mr.Thakkar. He has submitted that the learned Magistrate has rightly recorded acquittal against the accused. He has submitted that the Local Health Authority had failed to apply its mind as to the offence allegedly committed by the respondents. The sanction in question was, therefore, evidently given without the application of mind and was rightly held to be invalid.

I do agree with Mr.Bhate. The sanction (Exh.60) given by the Local Health Authority on 18th July, 1986 specifically refers to the sample in question and the report of the Public Analyst. It also discloses that the said sanction was given after perusal the relevant materials concerning the sample in question. The learned Magistrate has observed that in the sanction the Public Health Authority is required to

record the specific offence allegedly committed by the accused. I am unable to agree with the observation made by the learned Magistrate. Neither the language of Section 20 nor any ruling requires that the sanction should specifically refer to the offence allegedly committed by the accused. The Hon'ble Supreme Court has, in the matter of Suresh H.Rajput (supra), upheld a similar sanction given by the Public Health Authority under Section 20 of the Act. It is observed that, **“It is seen that the analysis report which was placed before the local (Health) authority and the other pertinent material in connection therewith have been placed before the sanctioning authority. After going through the material, sanction was granted for laying the prosecution. At that stage, it was not for the sanctioning authority to weigh pros and cons and then to find whether the case could end in conviction or acquittal or the adulteration was abnormal or marginal etc. All these are not matters for the sanctioning authority to weigh and to consider the pros and cons of the case before granting sanction to lay prosecution against the respondents.”**

In above view of the matter, I am of the opinion that the learned Magistrate has committed a grave error in holding that the sanction (Exh.60) suffered from the vice of non-application of mind and in holding that the sanction was not legal and valid. Consequently, the learned Magistrate has erred in recording acquittal of the accused.

In above view of the matter, the Appeal is allowed. The impugned judgment and order dated 26th February, 1992 passed by the learned Judicial Magistrate, First Class, Porbandar in Criminal Case No.5640/1986 is quashed and set-aside. The Criminal Case No.5640/1986 is remanded to the learned Judicial Magistrate, First Class, Porbandar for trial and decision on merits. Records and proceedings be returned to the trial Court forthwith.

**(Ms. R.M.Doshit, J.)**

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